

Patna High Court

**Shekhar Chandra Verma vs State Information
Commissioner on 9 December, 2011**

Author: Smt. T. Kumari

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1270 of 2009

IN

(CIVIL WRIT JURISDICTION CASE 11913/2009)

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**Shekhar Chandra Verma S/o Late Pradip Narayan Prasad
R/o. Moh-Rajvanshi Nagar, P.S. Shastrinagar, Patna**

.... Appellant

Versus

1. State Information Commissioner, Bihar

**2. The Secretary-Cum-Joint Registrar, State Information
Commission, 4th Floor, Suchana Bhawan, Bailey Road,
Patna**

**3. Sanjay Kumar Azad S/o Late Kameshwar Prasad Moh-
Bharaopar, Murarpur, P.S. Laheri, Bihar Sharif, Distt.
Nalanda**

.... Respondents

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Appearance :

**For the Appellant : Mr. Prabhat Kumar Singh, Advocate For
Respondent 1 and 2 :**

Mr. Lalit Kishore, AAG1

Ms.Binita Singh, Advocate

CORAM: HONOURABLE JUSTICE SMT. T. MEENA KUMARI

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIKASH JAIN)

1. The present appeal has been filed against the order dated 10.09.2009 passed by the learned Single Judge in CWJC No.11913 of 2009 dismissing the writ application which had been filed for quashing the order dated 29.07.2009 whereby a penalty of Rs.25,000/- had been imposed on the appellant under the provisions of the Right to Information Act, 2005 (hereinafter referred to as the 'RTI Act').

2. An application dated 24.04.2008 was filed by Sri Sanjay Kumar Azad (Respondent no.3) seeking certain information under the RTI Act on various points. It is relevant to note that para 2 (iv) of the said application required, inter alia, the information on the points enumerated therein to be supplied after carrying out physical inspection of the site. Patna High Court LPA No.1270 of 2009 dt.09-12-2011 2

3. Pursuant to the application aforesaid, the appellant, who was posted as Sub-divisional Officer, Biharsharif at the relevant time furnished the requisite information on the various points in terms of letter No. 200 dated 26.05.2008 as contained in Annexure-2.

4. The appellant was subsequently transferred as Additional Collector, Lakhisarai and accordingly handed over charge on 01.12.2008. Sometime after such transfer, an enquiry was conducted on 02.02.2009 by the Executive Magistrate, Biharsharif at the site in relation to which the information had been sought. Based on the enquiry report dated 02.02.2009, the appellant's successor supplied further information on 14.04.2009 to the Respondent no. 3 along with a copy of the said enquiry report.

5. It appears that in due course, the matter reached the State Information Commissioner in Case No.11841/08-09, who, by his order in memo no. 7462 dated 29.7.2009, ordered for imposition of a penalty of Rs.25,000/- for alleged delay in supply of information, inasmuch as the requisite information was not supplied until January, 2009 despite the appellant having been transferred to Lakhisarai prior thereto.

6. It is submitted on behalf of the appellant, however, that he had committed no default whatsoever in furnishing the required information as will be evident from the aforesaid letter dated 26.05.2008 (Annexure-2). He contends that the information to the extent available on the records had been duly supplied and he was not under any obligation to carry out a site inspection as required by the applicant. Learned counsel for the appellant buttresses his contention with reference to Section 7(1) read with Section 2 (j) of the RTI Act which in effect provide that the Right to Information is exercisable only with reference to information and records which are held by or under the control of any public authority. The definition of "information"

under Section 2(f) refers Patna High Court LPA No.1270 of 2009 dt.09-12-2011 3 to materials held and which can be accessed, which presupposes that the requisite information should be available as pre-existing with the public authority.

7. In the instant case, it is an admitted fact that well after the appellant was transferred out from Bihar Sharif an enquiry was carried out and based on the pursuant report dated 02.02.2009, certain supplementary information was provided by the appellant's successor. Clearly therefore, the further information as supplied by the appellant's successor was neither held by nor was under the control of the appellant while he was posted at Bihar Sharif.

8. Learned counsel for the respondent nos. 1 and 2 supports the order passed by the learned Single Judge and submits that the penalty has rightly been imposed on the appellant, who had withheld information required to be furnished to the information seeker.

9. We have heard the parties at length and considered the materials on record as well as the provisions of the RTI Act in this regard. We are of the view that the appellant had made substantial compliance by furnishing the information in his letter no.200 dated 26.05.2008. The supplementary information supplied by the appellant's successor was clearly not available on the records so long as the appellant was posted at Bihar Sharif and as such it cannot be said that information had been withheld by him. Learned counsel for the respondent nos. 1 and 2 was also unable to pin point any specific information which was available but withheld by the appellant.

10. In our view, the RTI Act contemplates furnishing of information which is available on records, but it does not go so far as to require an authority to first carry out an enquiry and thereby 'create' information, which appears to be what the information seeker had required of the appellant.

11. The view we have taken above is supported in principle by a recent Patna High Court LPA No.1270 of 2009 dt.09-12-2011 4 decision of the Apex Court in Central Board of Secondary Education and Another vs Aditya Bandopadhyay and Others [(2011) 8 SCC 497], in para 59 whereof it has been laid down that information which is not held by or under the control of any public authority and which cannot be accessed by any public authority under any law for the time being in force does not fall within the scope of the RTI Act. This has further been clarified in para 63 to the effect that the said Act provides access to all information that is available and existing. It has been stated that the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant.

12. In the above circumstances, therefore, we are unable to agree with the view of the learned Single Judge as expressed in his order dated 10.09.2009 which is accordingly set aside. The penalty of Rs.25,000/- imposed on the appellant is hereby cancelled.

13. It is made clear that in case any recovery out of the penalty amount of Rs.25,000/- has been made in the meantime, such amount recovered shall be returned to the appellant within a period of 30 days hereof.

14. With the above observations the LPA stands disposed of. (T. Meena Kumari, J.)

I agree

(Vikash Jain, J.)

(T. Meena Kumari, J.)

Patna High Court

Dated,9th December, 2011

AFR/Chandran